

**TRANSLATION****PATENT COOPERATION TREATY****PCT****INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>15460</b>	<b>FOR FURTHER ACTION</b>	See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/013235</b>	International filing date ( <i>day/month/year</i> ) <b>22.11.2004</b>	Priority date ( <i>day/month/year</i> ) <b>20.11.2003</b>
International Patent Classification (IPC) or national classification and IPC <b>A63B21/055</b>		
Applicant <b>COLTENE/WHALEDENT GMBH &amp; CO. KG</b>		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>2</u> sheets, as follows: <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/013235

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-11 as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the claims:
- nos. \_\_\_\_\_ as originally filed/furnished
- nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- nos.\* 1-8 received by this Authority on 28.11.2005 with letter of 28.11.2005
- nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the drawings:
- sheets 1/1 as originally filed/furnished
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	<u>2, 3, 5, 8</u>	YES
	Claims	<u>1, 4, 6, 7</u>	NO
Inventive step (IS)	Claims	<u></u>	YES
	Claims	<u>1-8</u>	NO
Industrial applicability (IA)	Claims	<u>1-8</u>	YES
	Claims	<u></u>	NO
2. Citations and explanations (Rule 70.7)			
<p>1. This report makes reference to the following documents:</p> <p>D1: US-A-5 316 533 (HOKER ET AL), 31 May 1994 (1994-05-31)</p> <p>D2: US-B1-6 179 751 (CLEARS WELDON R), 30 January 2001 (2001-01-30)</p> <p>D3: US-A-5 945 060 (WILLIAMS ET AL), 31 August 1999 (1999-08-31)</p> <p>2. INDEPENDENT CLAIM 1</p> <p>The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 is not novel (PCT Article 33(2)).</p> <p>Document D1 discloses (the references in parentheses are to that document):</p> <p>an exercising band (see D1, figure 1) for strengthening muscles, ligaments and tendons of the locomotor system, and including at least one</p>			

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	<p>thermoplastic elastomeric material (see D1, column 4, line 54: "Spandex "; the literature indicates that Spandex (TM) is a thermoplastic elastomeric material) and another material different from the thermoplastic elastomeric material (see D1, column 4, line 50), the materials forming different layers (see D1, figure 3).</p> <p>The subject matter of claim 1 is therefore not novel (PCT Article 33(2)).</p> <p>3. INDEPENDENT CLAIM 2</p> <p>The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 2 does not involve an inventive step (PCT Article 33(3)).</p> <p>Document D3 is considered to constitute the prior art closest to the subject matter of claim 2 and discloses (the references in parentheses are to that document):</p> <p>an exercising band (12) for strengthening the muscles, ligaments and tendons of the locomotor system, and including at least one thermoplastic elastomeric material (see D3, column 5; figures 4 and 5), depressions being formed in at least one side of the band in its longitudinal direction (see D3, column 7, lines 49-54).</p> <p>The subject matter of claim 2 therefore differs</p>

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>from the known exercising band in that the depressions are shaped as grooves.</p> <p>However, it is generally known to a person skilled in the art that the "grooves" constitute a feature which is equivalent to the "dimples" (<i>dimples</i>: D3, column 7, line 25) or to the "textured surface" (<i>surface is textured</i>: D3, column 7, line 15) known from document D3, and can replace these features whenever necessary.</p> <p>The solution proposed in claim 2 of the present application therefore cannot be considered inventive (PCT Article 33(3)).</p> <p>The subject matter of claim 2 therefore does not involve an inventive step (PCT Article 33(3)).</p> <p>4.       DEPENDENT CLAIMS 3-8</p> <p>Dependent claims 3-8 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT novelty and inventive step requirements; see documents D1, D2 and D3, and the corresponding text passages indicated in the search report.</p>